



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534

July 14, 2008

Mr. Randy Jones  
312 North Durham Road  
Gallatin, Tennessee 37066

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7006 0810 0000 1061 8990**

Subject: DIRECTOR'S ORDER NO. WPC08-0124  
TWIN EAGLES SUBDIVISION  
SUMNER COUNTY, TENNESSEE

Dear Mr. Jones:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager  
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Nashville  
DWPC – Compliance File  
OGC



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	
	)	
	)	
<b>RANDY JONES</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NO. WPC08-0124</b>

**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

**II.**

Randy Jones (hereinafter the "Respondent") is a resident of the state of Tennessee and is the owner/developer/contractor of a residential subdivision known as Twin Eagles Subdivision (hereinafter the "site") located on Highway 25 West at Wildcat Run and Osprey Drive in Sumner County. Service of process may be made on the Respondent at 312 North Durham Road, Gallatin, Tennessee 37066.

## JURISDICTION

### III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

### IV.

The Respondent is a “person” as defined by T.C.A. §69-3-103(20) and, as hereinafter stated, has violated the Act.

### V.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely



that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the "TNCGP") may be obtained by submittal of a Notice of Intent (NOI), a site-specific Storm Water Pollution Prevention Plan (SWPPP) and an appropriate fee.

## VI.

Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## VII.

The wetland associated with a tributary to East Camp Creek, referred to herein, is "waters of the state," as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, "Use Classifications for Surface Waters," these waters of the state have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.



## **FACTS**

### **VIII.**

On February 5, 2007, the Respondent submitted a NOI, SWPPP, and appropriate fee to the Nashville Environmental Field Office (NEFO) requesting coverage under the TNCGP for construction activities for phase 8 at the site.

### **IX.**

On March 1, 2007, the division sent correspondence notifying the Respondent that the NOI and the SWPPP were incomplete therefore a Notice of Coverage (NOC) could not be issued at that time.

### **X.**

On March 27, 2007, the division received the Respondent's updated SWPPP and on April 9, 2007, the division issued TNCGP coverage for Phase 8 at the site. The coverage was assigned tracking number TNR145286, and became effective April 9, 2007. A primary contractor had not been identified on the NOI.

### **XI.**

On April 23, 2008, division personnel conducted a complaint investigation at the site. Division personnel noted that Erosion Prevention and Sediment Control (EPSC) measures were inadequate, had not been maintained, and were not in accordance with the SWPPP. Previously installed silt fencing had not been maintained and sediment-laden water had flowed into the street and storm drains.

Division personnel observed that the Respondent had conducted land disturbance activities greater than one acre in an unpermitted phase of the site. The Respondent had also placed fill material in a spring-fed pond/suspected wetland. A subsequent file review determined that the Respondent had not applied for or been issued coverage under the TNCGP for construction activities at the additional phase of the site nor had the Respondent applied for or been issued ARAP authorization for alterations to waters of the state.

Division personnel further noted that the Respondent did not have a certified inspector at the site nor had weekly inspections been conducted as required by the TNCGP. The NOC was not posted on site, nor was the SWPPP available for review.

## **XII.**

On May 8, 2008, the division issued a Notice of Violation (NOV) to the Respondent for the violations observed during the April 23, 2008, complaint investigation. The Respondent was instructed to install and maintain adequate EPSC measures and to stabilize the site immediately. The Respondent was further instructed to submit an updated SWPPP that addressed all disturbed areas at the site that have permit coverage, within 15 days of receipt of the NOV.

The Respondent was also instructed to submit a Corrective Action Plan (CAP) to address the removal of the fill material from the spring-fed pond/suspected wetland and restore it to its original condition, and submit an ARAP application for written authorization for any additional alterations to waters of the state. Further, the Respondent



was instructed to submit an application for coverage under the TNCGP for construction activities to the additional phase of the site. The CAP, the ARAP application, and the TNCGP application were to be submitted to the division within 30 days of receipt of the NOV.

### **XIII.**

On June 6, 2008, the Respondent's representative sent a response to the division regarding the May 8, 2008, NOV, stating that corrective measures were being implemented at the site. After conducting a wetland delineation of the spring-fed pond/suspected wetland area, the representative determined that it did not possess the required soil and plant criteria to be a wetland.

### **XIV.**

On June 27, 2008, after reviewing the Respondent's correspondence, division personnel conducted a wetland delineation and determined that the Respondent's wetland delineation had been based on insufficient soil samples and that the area in question does possess all of the necessary criteria to be deemed a wetland.

The division noted that the Respondent had not submitted the CAP to address the removal of the fill material from the spring-fed pond/suspected wetland and restore it to its original condition or the updated SWPPP that addressed all disturbed areas at the site that have permit coverage, as requested in the NOV.



## **XV.**

During the course of investigation, the division incurred DAMAGES in the amount of FIVE HUNDRED SEVENTY TWO DOLLARS (\$572.00).

## **VIOLATIONS**

## **XVI.**

By failing to comply with the terms and conditions of the TNCGP, by conducting land disturbance activities of one acre or greater without coverage under the TNCGP, and by altering waters of the state without authorization under an ARAP, as described herein, the Respondent has violated T.C.A. Sections §69-3-108(b) and 69-3-114(b):

T.C.A. §69-3-108(b) states, in part:

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters.

T.C.A. §69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.



## **ORDER AND ASSESSMENT**

### **XVII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following Order and Assessment to the Respondent:

1. The Respondent shall, within 30 days of receipt of this Order and Assessment, submit for review and approval, a CAP that shall, at a minimum, include details regarding the manual and mechanical methods to be used for the removal of sediment from the wetland associated with a tributary to East Camp Creek, the restoration of the wetland to its natural state, and a time frame to complete the work. The written approval of the CAP by the division will constitute authorization for sediment removal from the affected areas as well as authorization for the restoration of the affected areas of the wetland and no additional ARAP coverage is required. The CAP shall be submitted to the Division of Water Pollution Control Manager at the NEFO at 711 R.S. Gass Boulevard, Nashville, Tennessee 37243. Any deficiencies the division finds, shall be corrected by the Respondent within 30 days of notification of those deficiencies and the revised CAP shall be resubmitted to the Water Pollution Control Manager at the NEFO.
2. The Respondent shall, within 15 days of division approval, initiate the activities outlined in the approved CAP and submit written notification that activities have begun to the Water Pollution Control Manager at the NEFO to the address listed in Item 1, above.

3. The Respondent shall, within 30 days of initiating the approved CAP, complete the CAP and submit written notification of completion to the division. The Respondent shall submit the written notification to the Water Pollution Control Manager in the NEFO at the address listed in Item 1, above.
4. The Respondent shall, within 15 days of receipt of this Order and Assessment, submit an updated SWPPP that addresses all disturbed areas at the site that have permit coverage.
5. The Respondent shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
6. The Respondent shall, within six months of receipt of this Order and Assessment, provide documentation of attendance and successful completion of the Department's EPSC Workshop for all employees who manage or oversee construction projects to the Water Pollution Control Manager at the NEFO at the address listed in Item 1, above. Information may be found on the program website at <http://www.tnepsc.org>.
7. The Respondent is hereby assessed a CIVIL PENALTY in the amount of NINE THOUSAND DOLLARS (\$9,000.00) to be paid as follows:
  - a. The Respondent shall pay TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to the division within THIRTY (30) DAYS of receipt of this Order.



- b. The Respondent shall pay ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) to the division within THIRTY 30 DAYS of default, if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
  - c. The Respondent shall pay ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) to the division within THIRTY 30 DAYS of default, if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.
  - d. The Respondent shall pay ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) to the division within THIRTY 30 DAYS of default, if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.
  - e. The Respondent shall pay FIVE HUNDRED DOLLARS (\$500.00) to the division within THIRTY 30 DAYS of default, if, and only if, the Respondent fails to comply with Item 4 above in a timely manner.
  - f. The Respondent shall pay ONE THOUSAND DOLLARS (\$1,000.00) to the division within THIRTY 30 DAYS of default, if, and only if, the Respondent fails to comply with Item 5 above in a timely manner.
  - g. The Respondent shall pay FIVE HUNDRED DOLLARS (\$500.00) to the division within THIRTY 30 DAYS of default, if, and only if, the Respondent fails to comply with Item 6 above in a timely manner.
8. The Respondent shall pay DAMAGES to the division in the amount FIVE HUNDRED SEVENTY TWO DOLLARS (\$572.00) payable within THIRTY 30 DAYS of receipt of this Order and Assessment.

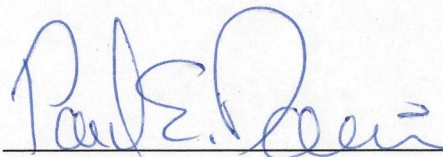
The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.



The director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 14<sup>th</sup> day of July, 2008.



Paul E. Davis, P.E.  
Director, Division of Water Pollution Control



## **NOTICE OF RIGHTS**

Tennessee Code Annotated §§69-3-109, 115, allows the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing, the Board has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board



has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20<sup>th</sup> Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.